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FILED
05/17/2023
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Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41Q-0020-I-2023
Weisz, Madeleine
3.00

MONTANA WATER COURT, UPPER MISSOURI DIVISION
MISSOURI RIVER FROM SUN RIVER TO MARIAS RIVER - BASIN 41Q
INTERLOCUTORY DECREE

CLAIMANT: Walter Gruel & Son Inc.

OBJECTOR: United States of America (Bureau of Land
Management)

CASE 41Q-0020-I-2023
41Q 30114941

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claim 41Q 30114941 appeared in the 41Q Interlocutory Decree with a DNRC issue remark and received an objection from the United States Bureau of Land Management (BLM).

2. The BLM objected because point of diversion and place of use No. 1 in the W2 of Section 19, T22N, R6E includes land owned by the United States. To resolve the objection, the BLM requests that the legal land descriptions for point of diversion and place of use No. 1 be replaced with the following legal land descriptions:

ID	Govt Lot	Qtr Sec	Section	TWP	RGE
1		W2	19	22N	6E
1		SW	19	22N	6E
2	4	SWNW	19	22N	6E
3		E2NW	19	22N	6E

3. Attached to the United States' objection is a map depicting land ownership. It confirms that the NWNW of Section 19, 22N, 6E is owned by the United States.

4. A show cause filing deadline was set for the claimant to comment on the United States objection and its request to modify the legal land description for point of diversion and place of use No. 1 to remove federal land.

5. The order setting filing deadline stated that if the claimant did not respond to show cause order by the deadline, claim 41Q 30114941 would be modified based on the United States Objection. Nothing was filed by the deadline.

5. Claim 41Q 30114941 received the following DNRC issue remark:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41Q DECREE ISSUED 05/27/2010.

The issue remark stating that the claim was not included in the Basin 41Q Preliminary Decree is a notice issue remark. Its purpose is to provide notice that this

claim has not been included in a water court decree before. The necessary notice has been provided and the issue remark should be removed from the claim.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

The evidence provided by the United States shows that the legal land description for point of diversion and place of use No. 1 should be modified to remove the portion of land owned by the United States.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The issue remark appearing on claim 41Q 30114941 is a notice remark that does not overcome the prima facie status. The issue remark has served its purpose and should be removed from the claim abstract.

3. If a claimant fails to comply with an Order issued by the Water Court in its review of issue remarks, including an Order issued by a Water Master appointed by the Court, the Court on its own initiative may amend or dismiss the claim to conform with information in the claim file or information obtained as part of the adjudication process. Section 85-2-248(9) MCA. The information before the court indicates that claim 41Q 30114941 should be modified to remove the portion of the point of diversion and place of use owned by the United States.

RECOMMENDATIONS

1. Claim 41Q 30114941 should be modified as provided above.
2. The issue remark should be removed from claim 41Q 30114941.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the changes have been made in the state's centralized database.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

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Service via Electronic Mail

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<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SW	19	22N	6E	CASCADE
Period of Diversion:	OCTOBER 1 TO JANUARY 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2	4	SWNW	19	22N	6E	CASCADE
Period of Diversion:	OCTOBER 1 TO JANUARY 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		E2NW	19	22N	6E	CASCADE
Period of Diversion:	OCTOBER 1 TO JANUARY 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
4	2	W2NW	30	22N	6E	CASCADE
Period of Diversion:	OCTOBER 1 TO JANUARY 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
5		E2	25	22N	5E	CASCADE
Period of Diversion:	OCTOBER 1 TO JANUARY 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
6	6	S2SW	18	22N	6E	CASCADE
Period of Diversion:	OCTOBER 1 TO JANUARY 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SW	19	22N	6E	CASCADE
2		4	SWNW	19	22N	6E	CASCADE
3			E2NW	19	22N	6E	CASCADE
4		2	W2NW	30	22N	6E	CASCADE
5			E2	25	22N	5E	CASCADE
6		6	S2SW	18	22N	6E	CASCADE
7		7	SESESW	18	22N	6E	CASCADE